

1 HONORABLE RICHARD A. JONES
2
3
4
5
6
7
8
9

10
11
12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
14 AT SEATTLE
15
16

17 IRBIT MOTORWORKS OF AMERICA,
18 INC.,

19 Plaintiff,

20 v.

21 ELECTROJET TECHNOLOGIES, INC.,

22 Defendant.

23 CASE NO. C18-1271 RAJ
24 ORDER
25
26

27 **I. INTRODUCTION**

18 This matter comes before the Court on Defendant ElectroJet Technologies, Inc.'s
19 Motion to Dismiss. Dkt. # 14. Plaintiff Irbit Motorworks of America, Inc. opposes the
20 Motion. Dkt. # 16. For the reasons set forth below, the Court **GRANTS** Defendant's
21 Motion.

22 **II. BACKGROUND**

23 The following is taken from Plaintiff's Complaint, which is assumed to be true for
24 the purposes of this motion to dismiss, as well as affidavits provided by both parties.
25

26 *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007); *see also Dole Food Co. v. Watts*,
27 303 F.3d 1104, 1107 (9th Cir.2002) (holding that in the context of a Rule 12(b)(2) motion

1 for lack of personal jurisdiction, the court is to take as true the allegations of the non-
2 moving party and resolve all factual disputes in its favor).

3 Plaintiff is a Washington corporation with its principal place of business in
4 Wixom, Washington. Dkt. # 1 at ¶ 1. Plaintiff manufactures and sells the Ural
5 motorcycle. Dkt. # 17 at ¶ 2. One of the components of the Ural motorcycle is an
6 electronic fuel injection (“EFI”) system. In 2011, Plaintiff reached out to Defendant in
7 order to explore the possibility of purchasing EFI systems from Defendant. *Id.* at ¶ 3;
8 Dkt. # 22 at ¶ 3. Defendant is a Michigan company with its principal and only place of
9 business in Michigan. Dkt. # 1 at ¶ 2. Defendant designs and manufactures engine
10 management or EFI systems for purchase by vehicle manufacturers. Dkt. # 22 at ¶ 2.
11 After Plaintiff contacted Defendant, Representatives from both companies met at
12 Defendant’s place of business in Michigan. Dkt. # 22 at ¶ 4. At the meeting, Defendant
13 agreed to design and engineer a custom EFI system for Plaintiff. *Id.* After approximately
14 two years of development, the engineering phase was complete and the product was
15 approved for volume production. *Id.* Plaintiff then travelled to Michigan to negotiate a
16 supply agreement (“Supply Agreement”). Dkt. # 22 at ¶ 6. In April of 2013, the parties
17 entered into the Supply Agreement. Dkt. # 1 at ¶ 7.

18 In October of 2015, Defendant’s CEO, Kyle Schwulst, met with Plaintiff at
19 Plaintiff’s offices in Washington to discuss the payment terms of the Supply Agreement.
20 Dkt. # 17 at ¶ 6; Dkt. # 22 at ¶ 7. Defendant began requiring that Plaintiff prepay any
21 purchase order in full. Dkt. # 17 at ¶ 6; Dkt. # 22 at ¶ 9. Schwulst visited Washington on
22 two other occasions: once in 2013 to attend Plaintiff’s annual dealer meeting, and once in
23 September of 2017 to meet with Plaintiff to talk about the possibility of assisting in the
24 design of a new engine. Dkt. # 22 at ¶ 10. Both parties estimate that Defendant’s
25 representatives visited Plaintiff’s Washington office approximately six times since 2013.
26 These six visits include the above-mentioned visits from Schwulst. Dkt. # 17 at ¶ 8;
27 Dkt. # 22 at ¶ 11. These visits also include one visit from an engineering support person

1 sent by Defendant to Washington for one week at Plaintiff's request in 2013. *Id.*
2 Pursuant to the warranties on its goods, Defendant provided Plaintiff with repair services
3 for defective products. Defendant also purchased small materials, such as fuel injector
4 fittings, from Plaintiff. Dkt. # 17 at ¶¶ 11, 12; Dkt. # 22 at ¶ 16. In 2017, the Supply
5 Agreement expired. Dkt. # 22 at ¶ 13. At some point after the Supply Agreement
6 expired, Defendant invoiced Plaintiff for an order of EFI systems that Plaintiff did not
7 fully prepay, and as a result, Defendant refused to ship certain goods to Plaintiff.
8 Dkt. # 17 Ex. F.

9 On August 28, 2018, Plaintiff filed this lawsuit against Defendant, alleging breach
10 of contract. Dkt. # 1. On August 30, 2018, Defendant filed a lawsuit against Plaintiff in
11 Oakland County Circuit Court in Michigan, alleging breach of contract and promissory
12 estoppel claims arising out of the same dispute at issue in this case. Dkt. # 15 at ¶ 7.
13 On September 21, 2018, Plaintiff filed a notice of removal and answer, affirmative
14 defenses, and a counterclaim against Defendant in the Eastern District of Michigan. *Id.*
15 Defendant then filed this Motion to Dismiss pursuant to Federal Rule of Civil Procedure
16 12(b)(2), or in the alternative, to transfer this case to the Eastern District of Michigan.
17 Dkt. # 14.

18 **III. DISCUSSION**

19 **A. Personal Jurisdiction**

20 Federal Rule of Civil Procedure 12(b)(2) allows a defendant to move to dismiss
21 claims against it for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). Plaintiff has
22 the burden of establishing personal jurisdiction. *CollegeSource, Inc. v. AcademyOne, Inc.*,
23 653 F.3d 1066, 1073 (9th Cir. 2011). “Where, as here, the defendant's motion is
24 based on written materials rather than an evidentiary hearing, the plaintiff need only
25 make a *prima facie* showing of jurisdictional facts to withstand the motion to dismiss”
26 *Id.* The plaintiff cannot “simply rest” on the bare allegations of his or her complaint, and
27 all “uncontroverted allegations” must be taken as true. *Ranza v. Nike, Inc.*, 793 F.3d

1 1059, 1068 (9th Cir. 2015). Where there are conflicts between parties over statements
2 contained in affidavits, these conflicts must be resolved in the plaintiff's favor. *Id.*

3 "Federal courts apply state law to determine the bounds of their jurisdiction over a
4 party." *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) (citing Fed.
5 R. Civ. P. 4(k)(1)(A)). Washington's long-arm statute, RCW 4.28.185, "extends
6 jurisdiction to the limit of federal due process." *Shute v. Carnival Cruise Lines*, 113 Wn.
7 2d 763, 771, 783 P.2d 78 (1989). The due process clause grants the court jurisdiction
8 over defendants who have "certain minimum contacts . . . such that maintenance of the
9 suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe
Co. v. Washington*, 326 U.S. 310, 316 (1945).

10 Personal jurisdiction can be found on either of two theories: general jurisdiction
11 and specific jurisdiction. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082,
12 1086 (9th Cir. 2000). A defendant with "substantial" or "continuous and systematic"
13 contacts with the forum state is subject to general jurisdiction. *Id.* "The inquiry whether
14 a forum State may assert specific jurisdiction over a nonresident defendant focuses on the
15 relationship among the defendant, the forum, and the litigation." *Axiom Foods, Inc. v.
16 Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (internal quotations omitted).
17 As Plaintiff does not assert that Defendant is subject to general jurisdiction, the Court
18 will consider whether Defendant is subject to specific jurisdiction.

19 The court applies a three-part test to determine whether the exercise of specific
20 jurisdiction over a non-resident defendant is appropriate: (1) the defendant has either
21 purposefully directed his activities toward the forum or purposely availed himself of the
22 privileges of conducting activities in the forum, (2) the plaintiff's claims arise out of the
23 defendant's forum-related activities, and (3) exercise of jurisdiction is reasonable. *Axiom
24 Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017). Plaintiff bears
25 the burden of satisfying the first two prongs. *Schwarzenegger v. Fred Martin Motor Co.*,
26
27

1 374 F.3d 797, 802 (9th Cir. 2004). The burden then shifts to defendant to make a
2 “compelling case” that the exercise of jurisdiction would not be reasonable. *Id.*

3 a. *Purposeful Direction*

4 A purposeful availment analysis is most often used in suits sounding in contract.
5 *Schwarzenegger*, 374 F.3d at 802. “A showing that a defendant purposefully availed
6 himself of the privilege of doing business in a forum state typically consists of evidence
7 of the defendant's actions in the forum, such as executing or performing a contract there.”
8 *Id.* By “purposefully availing itself” of the privilege of conducting activities within the
9 forum State, the defendant is the recipient of the benefits and protections of that State. In
10 return for these benefits and protections, the defendant must “submit to the burdens of
11 litigation in that forum.” *Id* (internal citations omitted). To have purposely availed itself
12 of the privilege of doing business in the forum, a defendant must have performed some
13 type of affirmative conduct which allows or promotes the transaction of business within
14 the forum state. *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990).

15 It is undisputed that Plaintiff approached Defendant in order to initiate their
16 business relationship and that Defendant does not advertise in Washington and did not
17 solicit Plaintiff’s business. Dkt. # 22 at ¶ 3. It is also undisputed that the Supply
18 Agreement between the parties was drafted in Michigan by Defendant’s attorneys, the
19 Supply Agreement was executed in Michigan, Plaintiff accepts delivery of goods from
20 Defendant in Michigan, and Defendant fulfilled Plaintiff’s orders for goods in Michigan.
21 Defendant is not a Washington entity, does not own or lease property in Washington,
22 does not have an office in Washington, does not employ anyone in Washington, and has
23 no contracts or other business in Washington other than its business with Plaintiff.
24 Dkt. # 15.

25 Plaintiff argues that Defendant has sufficient minimum contacts for personal
26 jurisdiction because Defendant’s representatives travelled to Washington on
27 “approximately” six occasions, Defendant shipped replacement product under warranty

1 to Plaintiff in Washington, and Defendant purchased connectors and fuel fittings from
2 Plaintiff. Dkt. # 16 at 8-9. Plaintiff's argument is unpersuasive. A contract alone does
3 not establish minimum contacts in a plaintiff's home forum, and a defendant's "transitory
4 presence" will only support jurisdiction if it was meaningful enough to create a
5 "substantial connection" with the forum State. *Picot v. Weston*, 780 F.3d 1206, 1213 (9th
6 Cir. 2015). Several of Defendant's visits to Washington were at Plaintiff's request and at
7 least two visits were unrelated to the events that gave rise to this lawsuit. While one visit
8 lasted for one week, this time period was not so extensive that Defendant's representative
9 created a "substantial connection" with Washington. Defendant's shipment of
10 replacement product is also insufficient to establish minimum contacts. Defendant
11 shipped product to Washington to fulfill its obligations under the Supply Agreement.
12 "[T]he fact that a contract envisions one party discharging his obligations in the forum
13 state cannot, standing alone, justify the exercise of jurisdiction over another party to the
14 contract." *Id.* Defendant's purchase of a small volume of fuel and electrical connectors
15 for approximately \$500 is similarly insufficient to justify the exercise of jurisdiction over
16 Defendant. Dkt. # 20 at 3; Dkt. # 22 at ¶ 16. The majority of contacts that Plaintiff relies
17 on to establish personal jurisdiction did not result from Defendant's affirmative actions,
18 but instead arose out of Plaintiff's contacts with Defendant. Plaintiff's reliance is
19 misplaced, as the jurisdictional analysis is limited to examining contacts that proximately
20 result from Defendant's actions, not Plaintiff's. *Picot*, 780 F.3d at 1213.

21 b. *Arising Out Of*

22 Even if Plaintiff had met its burden to show that Defendant purposely availed
23 himself of the privilege of conducting business in Washington, Plaintiff did not meet its
24 burden to show that its claims arose out of Defendant's actions. The Ninth Circuit has
25 adopted a "but for" analysis to determine whether the claims at issue arose from a
26 defendant's forum-related conduct. *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir.
27 2007). Plaintiff argues that, but for Defendant's visit in 2015 to discuss the payment

1 terms of the Supply Agreement, the parties would not be in litigation now. The Supply
2 Agreement expired in 2017. Plaintiff's claims arise out of a purchase order that is, by its
3 own admission, "independent from the Supply Agreement." Dkt. # 16 at 13. Further,
4 this modification in Defendant's payment practices when dealing with Plaintiff did not
5 present any issues for two years. Dkt. # 20 at 8; Dkt. # 22 at ¶ 13. The events underlying
6 this lawsuit occurred in 2017, and did not arise out of Defendant's forum-related actions.
7 As Plaintiff did not meet its burden to establish that the Court has personal jurisdiction
8 over Defendant, Defendant's Motion to Dismiss is **GRANTED**.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court **GRANTS** Defendant's Motion to Dismiss.

11 Dkt. # 14.

12
13 Dated this 30th day of November, 2018.

14
15 
16

17 The Honorable Richard A. Jones
18 United States District Judge
19
20
21
22
23
24
25
26
27